

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-10-E – ORDER NO. 2004-186
APRIL 12, 2004

IN RE: Application of Duke Energy Corporation)	ORDER GRANTING
for Authorization under Article 13,)	AUTHORITY TO ISSUE AND
Chapter 27 of Title 58 of the Code of)	SELL SECURITIES
Laws of South Carolina, 1976 to Issue)	
and Sell Securities)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) upon Application of Duke Energy Corporation (“Duke” or the “Company”), filed on January 7, 2004, requesting authority to issue and sell securities under the Company’s InvestorDirect Choice Plan.

In its Application, Duke provides the following as a description of the Company. Duke is a corporation organized and existing under the laws of the State of North Carolina and is authorized to do business in South Carolina. The Company’s name and post office address is Duke Energy Corporation, Post Office Box 1244, Charlotte, North Carolina 27602. Duke is duly authorized by the Company’s Restated Articles of Incorporation, as amended, to engage in the business of generating, transmitting, distributing and selling power and energy. Duke is a public utility under the laws of the State of South Carolina. As a public utility under the laws of South Carolina and under the laws of North Carolina, Duke is subject to the jurisdiction of the Public Service

Commission of South Carolina and the North Carolina Utilities Commission. Also certain of Duke's operations are subject to the jurisdiction of the Federal Energy Regulatory Commission under the Federal Power Act.

Authorized Capital Stock. According to Duke, the Company's authorized capital stock as of September 30, 2003, consists of Common Stock, Preferred Stock, Preferred Stock A, Serial Preferred Stock and Preference Stock. In its Application, Duke details the shares authorized, the shares issued and outstanding, and the value for each of the Company's stock categories as follows:

(a) The amount of Common Stock authorized by the Duke's Articles of Incorporation is 2,000,000,000 shares, without nominal or par value. The Company's Common Stock issued and outstanding at September 30, 2003, consisted of 906,930,553 shares with the total value of \$9,448,123,000.

(b) The amount of Preferred Stock authorized by Duke's Articles of Incorporation, is 12,500,000 shares of the par value of \$100 per share. The Company's Preferred Stock issued and outstanding at September 30, 2003, consisted of 1,274,984 shares with a total par value of \$127,500,000.¹

(c) The amount of Preferred Stock A authorized is 10,000,000 shares of the par value of \$25 per share. The Company's Preferred Stock A issued and outstanding at September 30, 2003, consisted of 1,257,185 shares at the par value of \$25 per share, or a total par value of \$31,430,000.

¹ Duke advises the Commission that \$25,000,000 Preferred Stock with sinking fund requirements has been classified to Long-Term Debt in the financial statements per FAS 150.

(d) The amount of Serial Preferred Stock authorized under Duke's Articles of Incorporation, is 20,000,000 shares. No shares of the Company's Serial Preferred Stock was issued and outstanding at September 30, 2003.

(e) The amount of Preference Stock authorized under Duke's Articles of Incorporation is 1,500,000 shares. No shares of the Company's Preference Stock was issued and outstanding at September 30, 2003.

Issuance and Sale of Common Stock. Duke provides a description of the Company's projected plan to issue and sell securities under the Company's InvestorDirect Choice Plan as follows. Duke proposes to issue and sell a maximum of 15 million shares of its Common Stock from time to time under the Company's InvestorDirect Choice Plan (the "Plan"). Duke states that the issuance of Common Stock under the Plan will be registered under a registration statement filed with the Securities and Exchange Commission. Each share of Common Stock outstanding, including the Common Stock to be issued pursuant to the Commission's order in this docket, includes a Preference Stock Purchase Right under the Applicant's Rights Agreement.

The Plan is a dividend reinvestment and stock purchase plan permitting automatic reinvestment of cash dividends paid upon Common Stock and Duke's Preferred Stocks. The Plan also allows participants to make optional investments in Common Stock up to a maximum of \$100,000 per month, and may from time to time allow optional investments exceeding that maximum based upon waivers granted by Duke. For a complete description of the Plan, Duke attaches to its Application as Exhibit A, a prospectus detailing the Plan.

The Plan provides shareholders and others with a convenient way to purchase shares of Common Stock without payment of brokerage commissions or service charges. The Plan provides Duke with a low-cost method of raising capital through optional cash investments in the Common Stock by large investors who are granted waivers by Duke of the maximum monthly optional investment limit. This feature includes a discounted pricing mechanism for such optional investments and this feature is also fully described in Duke's Exhibit A. Duke adds that the Commission has previously approved the issuance and sale of shares under the Plan in Docket No. 1999-278-E, and Duke request that this docket be closed upon issuance of an order in the present docket.

Fees and Costs. According to Duke, the Company will pay no fees for services (other than attorneys, accountants, trustees and fees for similar technical services) in connection with the negotiation or consummation of the issuance and sale of any of the Common Stock as proposed in its Application, nor for services in securing underwriters, agents, dealers or purchasers of such securities (other than fees negotiated with such persons).

Use of Proceeds. Duke states that the proceeds from sale of the Common Stock may be used for financing the Company's ongoing construction, which is detailed below, (including the acquisition of nuclear fuel), or general corporate purposes, including meeting the funding needs of any of the Company's subsidiaries or affiliates. Such proceeds may be used for the repayment of short-term debt.

Electric Plant and Demand Growth. According to Duke, the Company is continuing its construction program of additions to its electric generation, transmission

and distribution facilities in order to, among other things, (i) meet the expected increase in demand for electric service, (ii) construct and maintain an adequate margin of reserve generating capacity, (iii) conduct necessary replacements of major generating plant components, and (iv) meet environmental compliance requirements.

Duke asserts that sufficient financing of the Company's current construction program is essential if the Company is to continue to meet its obligations to the public to provide adequate and reliable electric service. According to Duke, the Company connected 59,912 new customers in 2002, and the Company's electric energy sales for 2002 reached 83.5 billion kWh and sales for 2001 were 79.5 billion kWh. Duke states that the Company continues to incur significant capital expenditures related to expansion and replacement of its transmission and distribution system. The Company's electric plant construction expenditures (including expenditures for the acquisition of nuclear fuel) were \$1.1 billion for 2001 and \$1.3 billion for 2002. Duke adds that the Company's construction program plans include incurring significant capital expenditures for replacing steam generators and for plant refurbishment at its Oconee Nuclear Station and for compliance with environmental rules and regulations.

For additional information on the Company's electric plant and demand growth, Duke attaches as Exhibit F to its Application, the Company's Unconsolidated Statement of Cash Flows.

Purposes and Compatibility with Public Interest. According to the Application, the purposes of the issuance and sale of the Common Stock under the Plan are lawful objects within the corporate purposes of Duke and are within the limits of

authority and purposes set forth in Duke's Articles of Incorporation. Further, Duke asserts that the issuance and sale of the Common Stock under the Plan will be compatible with the public interest, will be necessary and appropriate for, and consistent with, the proper performance by Duke of its service to the public as a utility, will not impair its ability to perform that service, and will be reasonably and appropriate for such purpose.

Financial Condition, Operating Reports and Reports of Issue and Sale. As to the financial condition of the Company and its previous operations, Duke refers to the Company's Annual Reports and other records on file with the Commission.

For the issue and sale in this docket, Duke proposes to submit annual reports to the Commission no later than March 31 of each year. According to Duke, such reports will describe the number of shares of Common Stock issued, the number of share issued for use in the Plan, along with the use of any proceeds from such share issuances.

Pursuant to Order 91-72 in Docket No. 91-032-E, the Commission requires all electric utilities to provide information responsive to certain questions listed in the Order. The Company has responded to each of those questions as follows:

a. Identify the effect on the income statement and balance sheet of the proposed financing.

The Company's pro forma unconsolidated balance sheet and pro forma unconsolidated income statement are attached to the Company's Application as Exhibits D and E, respectively.

b. Identify the planned use of the funds obtained through the proposed financing of the Company.

The proceeds resulting from the sales of shares of common stock will be used as set forth in the Application, specifically as described in Section 7 (Section 7 of Duke's Application is the same as section entitled herein as Use of Proceeds).

- c. Provide information on the possible impact on the Company if the proposed financing is not approved or if approval is delayed.

Disapproval or delay of the Application would prevent the Company from continuing to sell newly issued stock through its InvestorDirect Choice Plan (the "Plan") in the amounts it has deemed necessary for the purposes set forth in the Application. Please refer to Section 5. (Section 5 of Duke's Application is the same as section entitled herein as Issuance and Sale of Common Stock.) The ongoing financial stability of the Company is enhanced by this proposed financing. The Plan also provides numerous Company shareholders with a convenient method of purchasing and holding the Company's stock.

- d. Specify the best estimate of the rate of interest of any debt financing (a range for the rate is appropriate). For common stock issues, provide information on the best estimate of price and book value per share at the time of issue.

Since the shares of common stock will be offered from time to time under the Plan, the Company cannot predict market prices as of any future offering date.

- e. Provide information on the expected benefits (example – savings expected

from early debt retirement) and costs (example – issuance expenses) of the proposed financing. Provide any studies that were developed to identify these costs and benefits and the net result. (This could incorporate present value analysis of the costs/benefits.)

Identify the basic assumptions of any analyses or costs/benefits.

The expected benefits of the proposed financing are as set forth in the Application. Specifically, the financing will allow the Company to finance its ongoing construction program, and to use for general corporate purposes, including meeting the funding needs of the Company's subsidiaries and affiliates. The Plan allows for the ongoing issuance of new shares of stock without the costs of an underwritten public offering.

f. Identify the impact on the firm's capital structure of the proposed new financing.

Please refer to the pro forma unconsolidated statement of capitalization contained in Exhibit G to the Application.

CONCLUSIONS OF LAW

From a review and study of Duke's Application, its supporting data, Exhibits A – H attached to the Application, and other information in the Commission's files, the Commission finds that the purposes of the proposed issuance and sale of a maximum of 15 million shares of common stock under the Company's InvestorDirect Choice Plan

- (i) Are lawful objects within the corporate purposes of the Company;
- (ii) Are within the limits of authority and purposes set forth in the Company's Articles of Incorporation, as amended;

- (iii) Are compatible with the public interest;
- (iv) Are necessary and appropriate for and consistent with the proper performance by the Company of its service to the public as a utility;
- (v) Will not impair the Company's ability to perform its public service; and
- (vi) Are reasonably necessary and appropriate to provide adequate funds for such corporate purposes.

IT IS THEREFORE ORDERED THAT:

1. Duke Energy Corporation be, and hereby is, authorized, empowered and permitted (i) to issue and sell a maximum of 15 million shares of common stock under the Company's InvestorDirect Choice Plan pursuant to the terms and conditions described in the Application at such times as the Company may deem necessary or advisable and (ii) to execute, deliver, and carry out such instruments, documents and agreements as shall be necessary or appropriate to effectuate such transaction or transactions.

2. Approval of this Application does not bind the Commission as to the ratemaking treatment of the contemplated issuances.

3. This Order shall not, in any way, affect or limit the right, duty or jurisdiction of the Commission to further investigate and order revisions, modifications, or changes with respect to any provision of this Order in accordance with the law.

4. Commission Docket No. 1999-278-E be closed upon the issuance of this Order.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Mignon L. Clyburn, Chairman

ATTEST:

/s/
Bruce F. Duke, Executive Director

(SEAL)